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April 6 1953

In reply to Mr. Couts
GP

Dear Mr. Couts:

I have delayed a few days replying to your letter of March 27, regarding the problem of the Goodrich pre-war investments, until it was possible to send along a copy of the text of the treaty as agreed upon and signed at Tokyo. Attention is invited to Article XII, particularly paragraph 3, which follows the desired principle of providing no distinction between old and new investments in the matter of conversion and withdrawal rights. I trust this provision is satisfactory and proves to be of value when the treaty comes into force.

As your letter contains a very clear statement of the situation with respect to Goodrich investments in Japan, I am sending it to Mr. Thayer White of the office of this Department which deals with Japanese affairs, so that it will be available to him and his colleagues in event of future correspondence about the matter.

Sincerely,

Herman Walker
Commercial Policy Staff

Enclosure:

FCN Treaty with Japan.

Mr. C. R. Couts,
Assistant Counsel,
The E. F. Goodrich Company,
Akron, Ohio.

APR 6 1953 P M.

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HUNT, HILL & BETTS APR 15 1953

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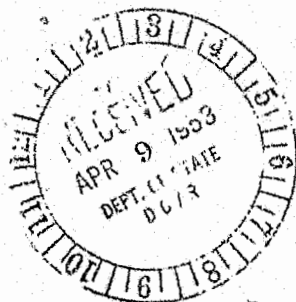
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886 MARUNOUCHI BLDG.
CHIYODA-KU, TOKYO, JAPAN

ACTION
is assigned to



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CHARLES B. HILL
SEC. WHITEFIELD BETTS, JR.
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EDWARD R. DOWNING
MURRAY D. WELCH, JR.



April 8, 1953

Department of State
Washington 25, D. C.

Gentlemen:

We should be very much obliged if we may be favored, at your earliest opportunity, with three sets of the recently signed Japanese-American Treaty of Friendship, Commerce and Navigation, if this is now available.

Any charges in connection with this matter will be naturally disbursed by us most willingly.

Thank you for your attention to this matter.

Respectfully,

Hunt, Hill & Betts

GY:RWH

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MESSAGE

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NEW YORK 5

April 9, 1953.

Mr. Herman Walker,
Commercial Policy Staff,
Department of State,
Washington, D. C.

Re: CP

Dear Mr. Walker:

Your letter enclosing two copies of the Treaty of Friendship, Commerce and Navigation between the United States of America and Japan, signed at Tokyo on April 2, 1953, was received yesterday. I was, of course, much gratified to learn, both from your letter and from the text accompanying it, that the banking provision had been agreed to in the form proposed. I immediately began the study of the document and can scarcely be said in this first reading to have mastered all of it, but, certainly, in general, it seems to me an admirable piece of work.

I must tell you, however, that in my first reading of paragraph 4 of the Protocol, I was startled, particularly as no parts of the Protocol had come to my attention, nor had been discussed in any of our conferences. A further and more careful examination of this one paragraph, however, convinced me that it was directed solely to paragraph 4 of Article VII and means that banking involving depository and fiduciary functions would normally be given most-favored-nation treatment, whether or not limitations had generally been placed on that type of business, but in certain instances banks foreign to Japan, other than those of the United States, might be permitted certain peculiar functions which, under paragraph 4 of the Protocol, could be denied to American banks because the law of the state within which the bank was incorporated, or if a national bank, the law of the state wherein it was domiciled, did not permit such functions to Japanese banks operating within such territory.

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Mr. Herman Walker

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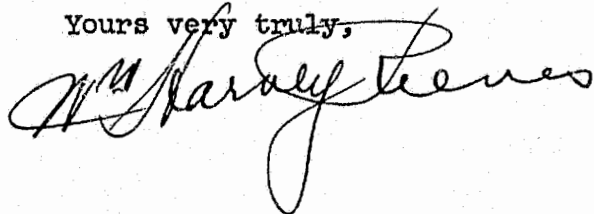
April 9, 1953.

We assume we are correct in this interpretation, that there is nothing in paragraph 4 of the Protocol which would detract from the protection given by paragraphs 1, 2 and 3 of Article VII, and particularly the second sentence in paragraph 2, that limitations which might be adopted in the future relating to the activities permitted to foreign banking organizations involving depository and fiduciary functions would not be applied as against enterprises which were engaged in those activities at the time when such limitations were adopted.

Because of our long association with The National City Bank of New York, an institution with its head office at New York City and a long and favorable history in Japan, we are naturally interested in any limitations whether under paragraph 1 of Article VII as to national treatment as modified by paragraphs 2 and 3, or under paragraph 2 guaranteeing the continuity of banking functions now carried on by American banks presently in Japan regardless of future limitations or prohibitions which might be imposed, or under paragraph 4, from an international competitive standpoint under the most-favored-nation provisions. I, therefore, would appreciate it very much if you could confirm to me the correctness of my interpretation with any other comments which you might care to make for my better understanding of paragraph 4 of the Protocol.

Thanking you for your continued interest in the matter and particularly for your promptness in bringing the Treaty to my attention, I am,

Yours very truly,

A handwritten signature in dark ink, appearing to read "W. H. Reeves". The signature is fluid and cursive, with the first name "W" and "H" being prominent and stylized.

WHReeves
la

In reply refer to
CP

April 18 1953

Dear Mr. Reeves:

I have your letter of April 9, in regard to the recently signed FCN treaty with Japan. We are pleased indeed that your first reading of the document elicited a favorable reaction, and I want to thank you for your kind words.

I can confirm the accuracy of your analysis of the intent and effect of the proviso contained in paragraph 4 of the Protocol. As you have observed, this proviso in no way touches paragraph 1, 2 and 3 of Article VII. Most particularly, it does not modify or qualify the second sentence of paragraph 2 of that Article. It would have bearing on American treaty rights in Japan only insofar as such rights were based on the most-favored-nation clause of the fourth paragraph of Article VII. The practical situation in which I visualize it might come into play would be that in which Japan in future made an agreement with some third country for the reciprocal admission of local-deposit banks of each country into the territories of the other. In that event, an American bank seeking permission to initiate a local deposit business in Japan, and resting its claim of right to obtain such permission on the most-favored-nation clause of paragraph 4 of Article VII, could, if the Japanese Government

so chose,

Mr. Harvey Reeves,
Shearman & Sterling & Wright,
20 Exchange Place,
New York 5, New York.

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so chose, be required to show that under the laws and regulations of its mother State (or the State of its principal office, if a federally-chartered company) a Japanese bank could obtain permission to initiate a like deposit business in such State.

As you know, the Japanese attached great importance to the principle of reciprocity throughout the negotiation, and the difficulty which the second sentence of Article VII(2) posed for them was that there are already American banks established in Japan with deposit-receiving privileges whereas the converse is not true. They nevertheless finally agreed to accept this provision and thus formally commit themselves to leave established American banking institutions undisturbed in accordance therewith. However, they still felt that their interests required in general some sort of reciprocity proviso, and the solution finally emerging was the cited passage in paragraph 4 of the Protocol, the general tenor of which was apparently inspired by a formula contained in several U. S. treaties with other countries in connection with real property rights (for example, Article IX, paragraph 2, of the FCN treaties with Colombia and Israel, respectively, signed in 1951). At the time of our meeting with you and Mr. Hughes last January, no actual proposal for such a proviso was before this Government; in fact, the question crystallized only in the final days of the negotiation and, as I recall, was the last substantive question to be settled prior to signature. I mention this for your personal information, as it may be considered to concern internal details of the negotiation which as a matter of diplomatic propriety should not be publicized.

Sincerely yours,

Herman Walker
Commercial Policy Staff

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